



# ***SOURCE SELECTION Exchanges***

**June 2000**

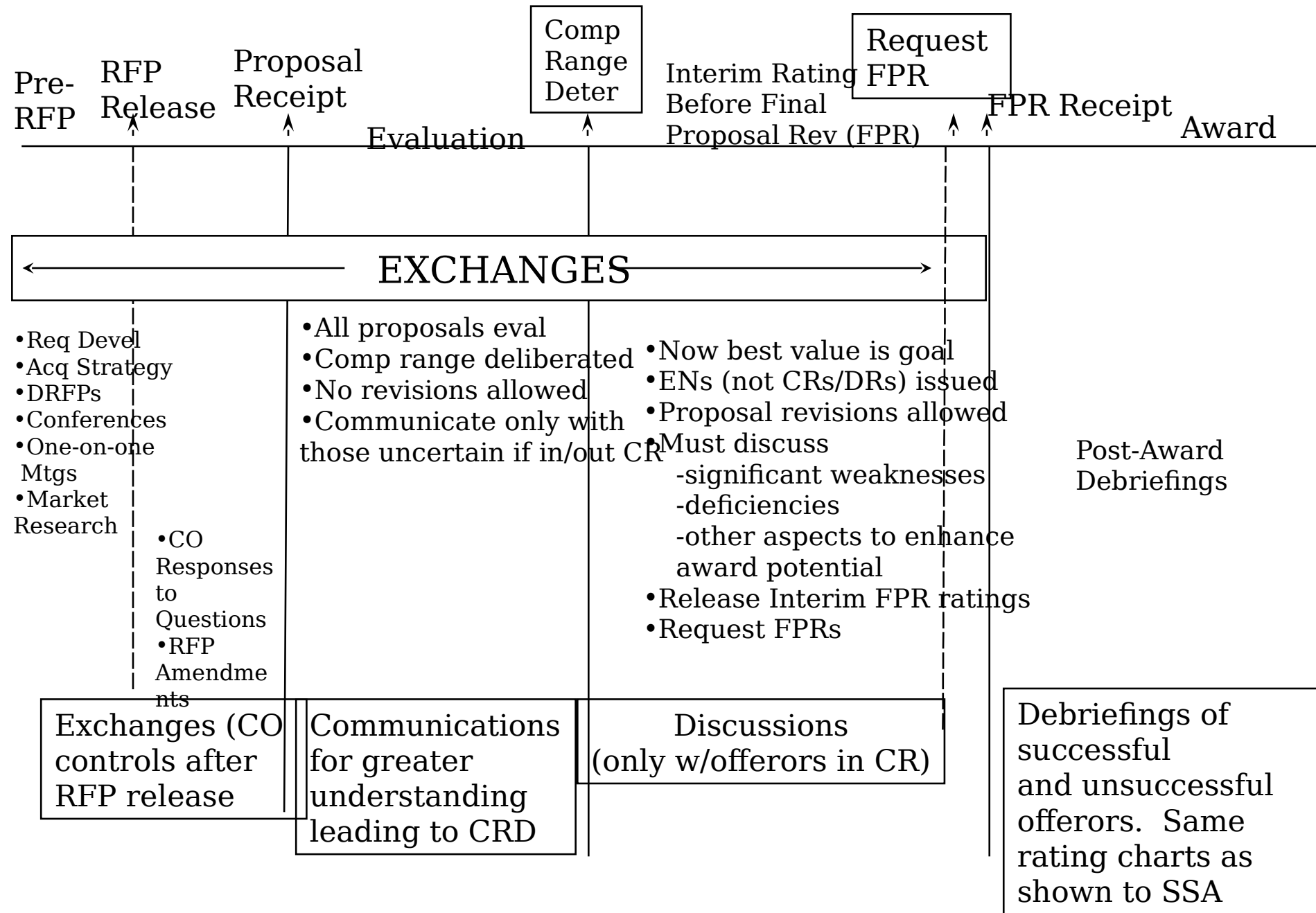
# ***OVERVIEW***

- Types of Exchanges
- Bargaining
- GAO cases
- Exercises

# Exchanges

- Exchanges constitute interaction with offerors throughout the acquisition.  
Exchanges can take of the form of:
- **pre-solicitation activities** (to promote early industry involvement and enhance cooperative relationship)
- **clarifications** (no proposal revisions)
- **communications** (used to increase understanding to make a competitive range determination)
- **discussions** (exchanges with offerors in the competitive range)

# EXCHANGES BY CONTRACTING PHASE WITH DISCUSSIONS



# EXCHANGES BY CONTRACTING PHASE

## AWARD WITHOUT DISCUSSIONS

Pre-RFP    RFP Release    Proposal Receipt    Evaluation    Award

### ← EXCHANGES →

- Req Devel
- Acq Strategy
- DRFPs
- Conferences
- One-on-one Mtgs
- Market Research
- CO Responses to Questions
- RFP Amendments

Exchanges (CO controls after RFP release)

- All proposals eval
- No revisions allowed
- ONLY used in award w/o discussions
- Only to:
  - Resolve minor/clerical errors
  - Clarify past performance relevance
  - Respond to adverse past performance information not previously responded to

Clarifications  
(NO proposal revisions!)

Post-Award Debriefings

Debriefings of successful and unsuccessful offerors. Same rating charts as shown to SSA

# Evaluation Notices (ENs)

- Single form used during evaluation to identify type of exchange
  - Clarifications
  - Communications
  - Discussions
- Evaluation Notices replace “clarification” and “deficiency” reports (CR/DR)
- Requirement to identify which ENs are considered deficiencies
- Should be written so that offeror clearly understands our concern don’t tell them what we want to hear but ask for information that we need to fully understand
- Attachment 2 to AF Source Selection Procedures Guide

# Clarifications are...

- **What the Government can talk to offerors about, *after receipt of proposals* if award without discussion is planned**
- All proposals must be initially reviewed and evaluated.
- If the Government decides that award without discussions is possible and appropriate, Government may give offerors the opportunity to clarify certain aspects of proposals.
  - Minor or clerical errors
  - Relevance of an offeror's past performance information and adverse past performance information on which the offeror has not previously had an opportunity to respond.
- Can only award without discussions if solicitation contains a notice (included in clause)
- **Reference FAR 15.306(a), FAR 52.215-1(f)(4)**

# Communications are...

- **What the Government can talk to offerors about, *before determination of the competitive range*, when award will be made after discussions**
- Objective: enhance the Government's understanding of proposals; allow reasonable interpretation of the proposal; or, facilitate the Government's evaluation process for the purpose of establishing the competitive range.
- Shall not provide an opportunity for the offeror to revise its proposal
- Held with offerors whose exclusion from, or inclusion in, the competitive range is uncertain.
- **Reference FAR 15.306(b)**



# Discussions are...

- **Negotiations conducted in a competitive environment after determination of competitive range**
- Objective: To maximize the Government's ability to get the best value and fully understand what was proposed.
  - To reach a complete agreement between the Government and the offeror regarding the requirements in the RFP and the offeror's proposed solution.
- You must conduct discussions with every offeror in the competitive range
- **Reference: FAR 15.306(d)**

# Discussion Limitations and Guidelines

- Limitations (Don't do it):
  - favoring one offeror over another;
  - revealing an offeror's solution, technology, or intellectual property to another offeror;
  - revealing an offeror's price without that offeror's permission;
  - revealing the names of individuals providing past performance information;
  - or knowingly furnishing source selection information.
- Guideline: discussions must be both meaningful and fair. -- Discussions are tailored for each offeror.
- Bottomline: Confirm all information obtained through discussions by requesting proposal revisions.

# Discussion Exchanges

- Deficiencies - A material failure to meet a requirement. Clearly doesn't meet a requirement, or submits a proposal that contains a combination of significant weaknesses.
- Weaknesses that drive other than low proposal risk- Include non-cost and cost weaknesses that appreciably increase the risk of unsuccessful contract performance.
- Remember to confirm all information obtained through discussions by requesting proposal revisions.

# **Can the competitive range be changed during discussions?**

- Yes
- The contracting officer must first have had an opportunity to discuss with each offeror, weaknesses (those that drive other than low rating) deficiencies, and other aspects of its proposal.
- If the contracting officer decides an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award
- A written notice of the decision must be provided to the offeror.

# Final Proposal Revisions

- What happened to Best and Final Offers? -- they are gone!
- Tailor the number of requested or allowed proposal revisions to each offeror's proposal
- All offerors shall be given an opportunity to revise their proposals simultaneously.
- Use a common cut off date and time to ensure a fair competitive environment
- If after receipt of final revised proposals it becomes necessary to subsequently clarify you can without any additional request for final offers from all offerors
- If in unlikely case you need to further expand negotiations, a second final offer opportunity must be extended to all offerors,

# Pre-Award Debriefings

- Purpose: provide early feedback to industry concerning why the offeror was eliminated from the competitive range.
- Conducted at the offeror's request
- While limited in scope and content, will provide sufficient information to offerors about their proposal evaluation to allow them to benefit from the exchange and to apply that information to other competitions in a timely manner
- Offerors will *not* receive a comparative assessment of the other offerors proposals in an early debriefing
- The Government is only obligated to provide one debriefing (pre-award or post)

# GAO Cases regarding Exchanges



# Meaningful Discussions

- **Must lead offerors into areas that require amplification or correction** Alliant Techsystems, Comp Gen B-260215.4
- **Required to discuss weaknesses that are identified as “serious concern” & “of major importance”** Global Industries, Comp Gen B-270592.2
- **No requirement to identify weaknesses in proposal that’s technically acceptable but has less desirable approach than others** PRB Associates, Comp Gen B-277994,
- **Weaknesses can’t prevent offeror from having reasonable chance of award** Professional Services Group, Comp Gen B-274289.2



# Meaningful Discussions

- **Not required to discuss issues that did not “strongly influence” the source selection decision**  
American Combustion, Comp Gen, B-275057.2
- **Minor weaknesses” need not be discussed when in competitive range** ADP Network Services, Comp Gen B-200675
  - No obligation to discuss every aspect of proposal that receives less than maximum score
- **Offeror not entitled to discussions for sole purpose of receiving “perfect score” in all areas**  
SEAIR Transport, Comp Gen B-274436
- **Not required to disclose weaknesses where proposal rated “good” rather than “excellent”**  
PRB Associates , Comp Gen B-277994



# Clarification vs Discussion

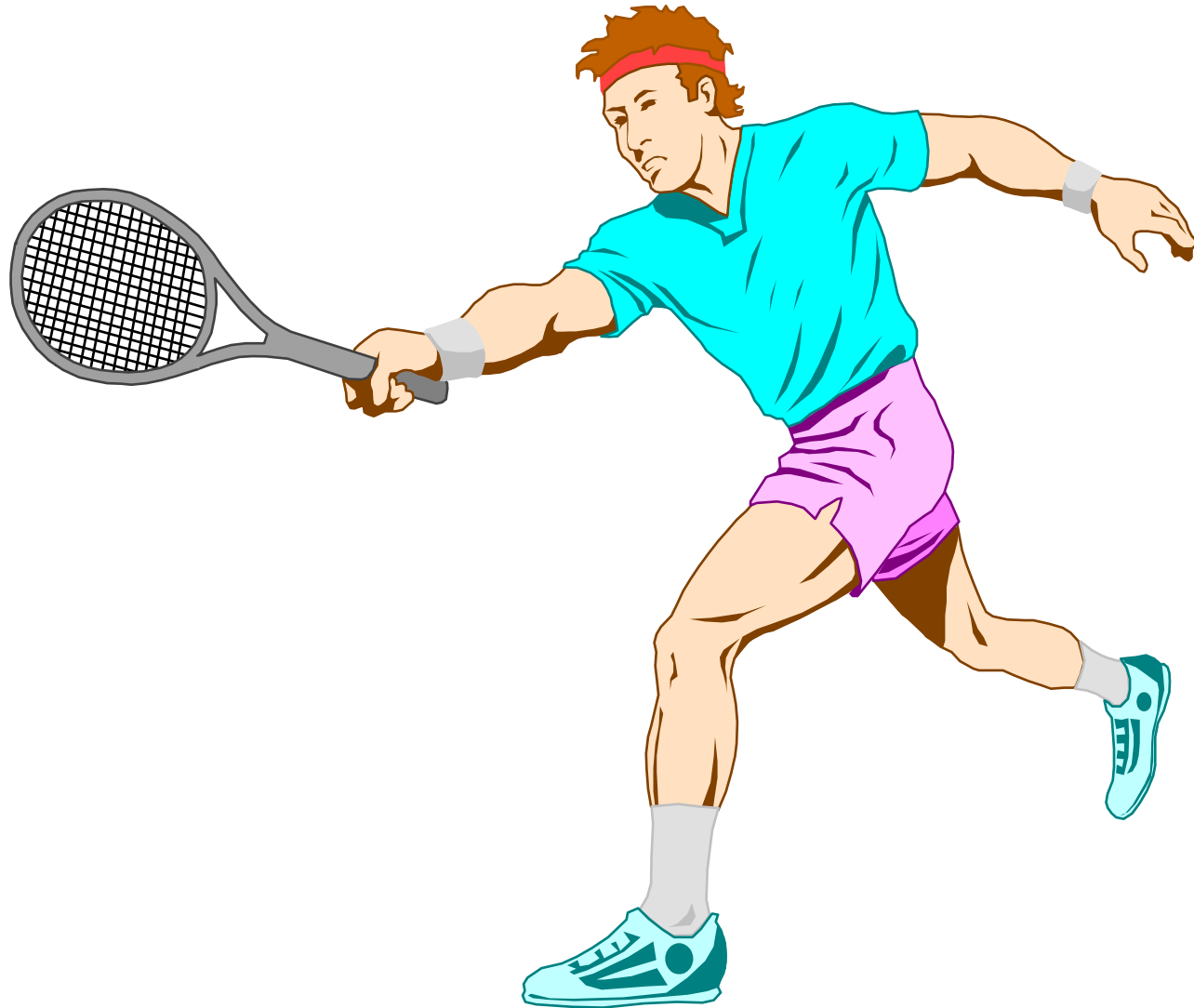
## **BE Inc., PAI Corp., GAO, B-277978, 12/16/97**

- Department of Energy used oral presentations to evaluate past performance
- Both BEI and PAI protested, PAI challenged DOE's determination not to request BAFOs
- GAO ruled questions regarding past performance constituted clarifications only and did not fit the FAR 15.601 definition of discussions

# Dealing with Adverse Past Performance

- Rohmann Services, Inc., B-280154.2, Nov. 16, 1998
- CO must give offeror an opportunity to respond “where there clearly is a reason to question the validity of the past performance information
  - where there are obvious inconsistencies between a reference’s narrative comments and the actual ratings the reference gives the offeror.”

# *Exercise*



# Developing ENs

- From the information in the proposal it appears the offeror will be working all the personnel 14 hours a day with no vacation.
  - Develop a question that addresses this concern to convey on the EN form.
- ***With the staff proposed it appears that in order to meet the requirement all personnel would have to work 14 hours per day without vacation or sick time. Was that the intent? Please explain.***

# Developing ENs

- The offeror's cost appear very high in one labor area for junior plumbers. Will the following question help you more fully understand the cost proposal? Why or why not?
  - *Question: Explain your high labor cost.*
- ***Not enough information for the offeror to understand that it is only one category of workers that is driving the concern expressed in this EN.***

# Developing ENs

- Do you have any concerns with the way this EN to more clearly understand how the offeror will process fuel samples is written?
  - *You have proposed to use a sonic technique for fuel filtering. This is not a process DoD has used. Please explain how you will use the water pressure system that we have always used at this base.*
- ***Yes, we have not only assumed our way is the only way to do something but told them to revise their proposal to use the water process. If the water process is not a requirement for fuel filtering we have in effect established an unwritten requirement into the SOW and into our evaluation***

# Developing ENs

- Which of the following is better EN and why?
  - *Please readdress your proposed staffing?*
  - *Wouldn't 16 people per shift be more realistic than the 14 you proposed?*
  - *Please address how you will accomplish all the performance requirements identified at 4.5.6 of the SOW with the staffing you have proposed. It appears the proposed staffing for this requirement is low.*
- ***Only the last one conveys the concern in a way the offeror can understand our concerns without directing their reply.***



# Clarifications? Communications?

## Discussions? Which are these?

- Section B consists of 4 clins. The first contract period will run for 6 months. Clin 0001 indicates the extended price of 6 months of service at \$1,200 per month would cost \$7,2000.
- *Clarification -clearly math error*
- The offeror has proposed to subcontract 35% of the technical work, the cost volume fails to provide any cost information on the subcontracted effort.
- *Discussion - will require change of proposal.*
- A specific acquisition is for technical services to process fuel samples for aircraft, cars and trucks at a given base. The following EN summary comment is provided: "Discuss your process and procedures for handling diesel fuel sampling."
- *Discussion - will require change of proposal. With the limited information in this case, it appears this EN is probably addressing a deficiency in the proposal to address a requirement.*

# Clarifications?

## Communications?

### Discussions? Which are these?

- An acquisition is being conducted to obtain services to calibrate laboratory equipment. The following comment is provided on an EN: “Your proposal has indicated a 6 hour turn-around for calibration services which is much better than the 24 hour requirement in the SOW. Verify that this is your intent.”
- *Discussion or communication.. You may get a proposal revision even if you don't ask for one – be prepared as then you will be in discussion. Could be communication if this is the reason government is not sure if offeror should or should not be in the competitive range.*

# Clarifications?

## Communications?

### Discussions? Which are these?

- An offeror competing for a new contract proposes \$0 for phase-in costs under a cost contract. You need to ask them how they planned to accomplish phase-in for no cost.
- *Discussion*
- All four offerors failed to discuss how they would transition existing work in process being accomplished by the government upon award of an A-76 contract. How would you handle this?
- *This would appear to be a problem with the RFP and should be corrected via amendment*
- Discuss the impact of your plan to cross utilize auto mechanics and x-ray technicians to support radiology services for dental services.
- *Discussion – you need more information but do understand what they are proposing.*

# Clarifications? Communications?

## Discussions? Which are these?

- Your acquisition is for custodial service in Arizona. One offeror has completed FAR 52.215-6 Place of Performance with the address for the offeror's main headquarters in Chicago rather than your base in Arizona. All other information in the proposal clearly indicates that they understand the performance is in Arizona.
- *This is an obvious mistake in understanding what the clause means and it can be determined that the intent was to cite the base location -clarification.*
- Explain in more detail your plans to accommodate surges of additional laundry requirements.
- *Discussion - you are asking them to revise their proposal.*